

**ENROLLED BILL**

-- *Judicial Proceedings/Environmental Matters* --

Introduced by **Senator Forehand**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Vehicle Laws - Vehicle Dealers - Succession**

3 FOR the purpose of authorizing the officers or other authorized representatives of  
4 certain business entities to sign certain license applications; prohibiting the  
5 exclusion of certain vehicle dealerships from the use of a dealer's facilities under  
6 certain circumstances; ~~requiring a sales objective or other program for~~  
7 ~~measuring the performance of vehicle dealers to be fair and based on certain~~  
8 ~~factors under certain circumstances; prohibiting a manufacturer, distributor, or~~  
9 ~~factory branch from denying certain benefits to a dealer under certain~~  
10 ~~circumstances; requiring the designation of certain individuals to represent~~  
11 certain vehicle dealers and prohibiting the withholding of approval of certain  
12 designated individuals as successors under certain circumstances; establishing  
13 the burden of proof at certain hearings under certain circumstances; providing  
14 for continuation of certain vehicle dealerships and franchises under certain  
15 circumstances; providing for replacement of certain individuals who are vehicle  
16 dealers under certain circumstances; making technical changes; providing for  
17 the application of certain provisions of law; and generally relating to ~~the~~

1 ~~succession of automobile~~ certain vehicle dealerships.

2 BY repealing and reenacting, without amendments,  
3 Article - Transportation  
4 Section 15-101(b)  
5 Annotated Code of Maryland  
6 (2002 Replacement Volume and 2005 Supplement)

7 BY repealing and reenacting, with amendments,  
8 Article - Transportation  
9 Section 15-102(c), 15-207, 15-209, and 15-211.1  
10 Annotated Code of Maryland  
11 (2002 Replacement Volume and 2005 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Transportation**

15 15-101.

16 (b) (1) "Dealer" means, except as provided in paragraph (3) of this  
17 subsection, a dealer in vehicles of a type required to be registered under Title 13 of  
18 this article.

19 (2) (i) "Dealer" includes:

20 1. A person who is in the business of buying, selling, or  
21 exchanging vehicles, including a person who during any 12-month period offers to  
22 sell three or more of these vehicles, the ownership of which was acquired for resale  
23 purposes; and

24 2. For the purposes of §§ 15-301 through 15-315, inclusive,  
25 of this title, any person who sells vehicles, whether or not that person acquired the  
26 vehicles for personal or business use, if the vehicles are displayed at a fixed location  
27 used principally for the purpose of selling vehicles on a regular basis.

28 (ii) 1. For the purposes of subparagraph (i)1 of this paragraph, a  
29 person who offers to sell three or more vehicles during any 12-month period is  
30 presumed to have acquired the vehicles for resale purposes.

31 2. The vehicle owner has the burden of rebutting the  
32 presumption established under sub-subparagraph 1 of this subparagraph by a  
33 preponderance of the evidence.

34 (3) "Dealer" does not include:

1 (i) A public official who sells or disposes of vehicles in the  
2 performance of his official duties;

3 (ii) An insurance company, finance company, bank, or other lending  
4 institution licensed or otherwise authorized to do business in this State that, to save  
5 it from loss, sells or disposes of vehicles under a contractual right and in the regular  
6 course of its business;

7 (iii) A licensed auctioneer acting on behalf of a seller, secured party  
8 or owner and where title does not pass to the auctioneer and the auction is not for the  
9 purpose of avoiding the provisions of this title;

10 (iv) A receiver, trustee, personal representative, or other person  
11 appointed by or acting under the authority of any court;

12 (v) Either a manufacturer or distributor who sells or distributes  
13 vehicles to licensed dealers or a person employed by a manufacturer or distributor to  
14 promote the sale of the vehicles of the manufacturer or distributor, if that  
15 manufacturer, distributor, or person does not sell vehicles to retail buyers;

16 (vi) A person who sells or disposes of vehicles acquired and used for  
17 personal or business use and not for the purpose of avoiding the provisions of this  
18 title, if that person is not engaged in buying, selling, or exchanging vehicles as a  
19 business;

20 (vii) An automotive dismantler and recycler who during the normal  
21 course of business acquires a salvage vehicle and transfers the vehicle on a salvage  
22 certificate. However, if the automotive dismantler and recycler rebuilds and sells  
23 more than 5 vehicles during a 12-month period to a person other than another  
24 automotive dismantler and recycler or licensed dealer, the automotive dismantler and  
25 recycler must be licensed as a dealer under § 15-302 of this subtitle;

26 (viii) A person engaged in the leasing of motor vehicles under leases  
27 not intended as security; or

28 (ix) A religious, charitable, or volunteer organization exempt from  
29 taxation under § 501(c) of the Internal Revenue Code, the Department of Human  
30 Resources, or a local department of social services transferring a vehicle under §  
31 13-810 of this article.

32 15-102.

33 (c) Each application for a license under this title shall:

34 (1) Contain a certification by the applicant that the information given in  
35 it is true; and

36 (2) Be signed by:

37 (i) The applicant, if the applicant is an individual;

1 (ii) A partner or other authorized representative, if the application  
2 is made for a partnership; or

3 (iii) An officer or other authorized representative, if the application  
4 is made for a corporation OR ANY OTHER BUSINESS ENTITY.

5 15-207.

6 (a) (1) In this section the following words have the meanings indicated.

7 (2) (i) "Coerce" means to compel or attempt to compel by threat of  
8 harm, breach of contract, or other adverse consequences.

9 (ii) "Coerce" does not include to argue, urge, recommend, or  
10 persuade.

11 (3) "Require" means to impose upon a dealer a provision not required by  
12 law or previously agreed to by a dealer in a franchise agreement, excluding business  
13 decisions by a manufacturer, distributor, or factory branch which are uniformly  
14 applied to all Maryland dealers in new vehicles of the manufacturer, distributor, or  
15 factory branch.

16 (b) A manufacturer, distributor, or factory branch, whether directly or through  
17 an agent, employee, or representative, may not coerce any dealer to make any  
18 agreement with the manufacturer, distributor, or factory branch.

19 (c) A manufacturer, distributor, or factory branch, whether directly or through  
20 an agent, employee, or representative, may not coerce any dealer to order or accept  
21 delivery of any vehicle, any equipment, parts, or accessories for a vehicle, or any other  
22 commodity that is not required by law or by the dealer's franchise or that was not  
23 ordered voluntarily by the dealer.

24 (d) A manufacturer, distributor, or factory branch, whether directly or through  
25 an agent, employee, or representative, may not require or coerce a dealer, by  
26 franchise agreement or otherwise, or as a condition to the renewal or continuation of  
27 a franchise agreement, to:

28 (1) [Eliminate] EXCLUDE from the use of the dealer's facilities a  
29 dealership for which the dealer has a franchise agreement to utilize the facilities [as  
30 of March 1, 1996]; or

31 (2) Materially change the dealer's facilities or method of conducting  
32 business if the change would impose substantial financial hardship on the business of  
33 the dealer.

34 (e) (1) A manufacturer, distributor, or factory branch, whether directly or  
35 through an agent, employee, or representative, may not require or coerce a dealer to  
36 adhere to performance standards that are not applied uniformly to other similarly  
37 situated dealers.

1 (2) ~~(H)~~ A performance standard, ~~SALES OBJECTIVE~~, or program for  
 2 measuring dealership performance that may have a material effect on a dealer;  
 3 ~~INCLUDING THE DEALER'S RIGHT TO PAYMENT UNDER ANY INCENTIVE OR~~  
 4 ~~REIMBURSEMENT PROGRAM~~, and the application of the standard, ~~OBJECTIVE~~, or  
 5 program by a manufacturer, distributor, or factory branch shall be fair, reasonable,  
 6 equitable, and based on accurate information, ~~INCLUDING:~~

7 ~~1. THE DEMOGRAPHIC CHARACTERISTICS OF THE~~  
 8 ~~POPULATION, WITH EMPHASIS ON CAR AND TRUCK PREFERENCES; AND~~

9 ~~2. THE GEOGRAPHIC CHARACTERISTICS THAT AFFECT CAR~~  
 10 ~~AND TRUCK SHOPPING PATTERNS IN THE DEALER'S ASSIGNED MARKET AREA.~~

11 ~~(H) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY~~  
 12 ~~NOT DENY THE BENEFITS OF MEETING A STANDARD, SALES OBJECTIVE, OR~~  
 13 ~~PROGRAM TO A DEALER WHO PRESENTS DOCUMENTATION OR REASONABLE~~  
 14 ~~EVIDENCE THAT IT WAS MET.~~

15 (3) (i) If the performance standard is based on a survey, it must be  
 16 shown that:

- 17 1. The survey was designed with experts;
- 18 2. The proper universe was examined;
- 19 3. A representative sample was chosen; and
- 20 4. The data was accurately reported.

21 (ii) The manufacturer, distributor, or factory branch shall establish  
 22 the objectivity of the survey process and provide this information to any dealer of the  
 23 same line make covered by the survey on request.

24 (f) A franchise agreement or other contract offered to a dealer by a  
 25 manufacturer, distributor, or factory branch may not contain any provision requiring  
 26 a dealer to pay the attorney's fees of the manufacturer, distributor, or factory branch  
 27 related to disputes involving the franchise.

28 (G) (1) (I) IF THE DEALER IS AN ENTITY OTHER THAN AN INDIVIDUAL,  
 29 THE DEALER SHALL DESIGNATE AN INDIVIDUAL TO REPRESENT THE DEALER TO DO  
 30 BUSINESS WITH THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH.

31 (II) APPROVAL OF THE INDIVIDUAL MAY NOT BE WITHHELD BY THE  
 32 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH UNLESS THE INDIVIDUAL IS  
 33 UNFIT DUE TO LACK OF GOOD MORAL CHARACTER OR FAILS TO MEET REASONABLE  
 34 GENERAL BUSINESS EXPERIENCE REQUIREMENTS.

35 (2) A DEALER SHALL HAVE A REASONABLE AMOUNT OF TIME TO:

1 (I) DESIGNATE A REPRESENTATIVE OR A SUCCESSOR IF A CHANGE  
2 IS REQUIRED FOR ANY REASON; AND

3 (II) OBTAIN APPROVAL OF THE REPRESENTATIVE OR SUCCESSOR  
4 DESIGNATED UNDER ITEM (I) OF THIS PARAGRAPH, INCLUDING TIME FOR A  
5 HEARING, IN THE EVENT OF ANY OBJECTION BY THE MANUFACTURER, DISTRIBUTOR,  
6 OR FACTORY BRANCH.

7 (3) AT A HEARING RESULTING FROM AN OBJECTION TO THE APPROVAL  
8 OF THE DESIGNATED INDIVIDUAL, THE MANUFACTURER, DISTRIBUTOR, OR FACTORY  
9 BRANCH HAS THE BURDEN OF PROVING THAT THE DESIGNATED INDIVIDUAL IS NOT  
10 OF GOOD MORAL CHARACTER OR FAILS TO MEET REASONABLE GENERAL BUSINESS  
11 EXPERIENCE REQUIREMENTS.

12 15-209.

13 (a) A manufacturer may not terminate, cancel, or fail to renew the franchise of  
14 a dealer, notwithstanding any term or provision of the franchise, unless:

15 (1) The dealer has failed to comply substantially with the reasonable  
16 requirements of the franchise; and

17 (2) Except as otherwise provided by subsection (d) of this section, the  
18 manufacturer:

19 (i) Gives the dealer at least 90 days' prior written notice of the  
20 termination, cancellation, or nonrenewal and of the specific grounds for the action;  
21 and

22 (ii) Provides the Administration with a copy of that notice.

23 (b) A distributor may not terminate, cancel, or fail to renew the franchise of a  
24 dealer, notwithstanding any term or provision of the franchise, unless:

25 (1) The dealer has failed to comply substantially with the reasonable  
26 requirements of the franchise; and

27 (2) Except as otherwise provided by subsection (d) of this section, the  
28 distributor:

29 (i) Gives the dealer at least 90 days' prior written notice of the  
30 termination, cancellation, or nonrenewal and of the specific grounds for the action;  
31 and

32 (ii) Provides the Administration with a copy of that notice.

33 (c) A factory branch may not terminate, cancel, or fail to renew the franchise  
34 of a dealer, notwithstanding any term or provision of the franchise, unless:

35 (1) The dealer has failed to comply substantially with the reasonable  
36 requirements of the franchise; and

1 (2) Except as otherwise provided by subsection (d) of this section, the  
2 factory branch:

3 (i) Gives the dealer at least 90 days' prior written notice of the  
4 termination, cancellation, or nonrenewal and of the specific grounds for the action;  
5 and

6 (ii) Provides the Administration with a copy of that notice.

7 (d) The 90-day notice period required by subsection (a) of this section:

8 (1) May be reduced to not less than 15 days, if the ground for the  
9 termination, cancellation, or nonrenewal is the dealer's inability to reasonably serve  
10 the interests of the public; and

11 (2) Is not required, if the dealer waives it in writing.

12 (e) (1) If a dealer receives written notice that his franchise is being  
13 terminated, cancelled, or not renewed, the dealer may, within the notice period  
14 required by this section, request a hearing under Title 12, Subtitle 2 of this article [to  
15 determine whether] IN WHICH THE MANUFACTURER, DISTRIBUTOR, OR FACTORY  
16 BRANCH MUST SHOW THAT the dealer has failed to comply substantially with the  
17 reasonable requirements of the franchise.

18 (2) If the dealer requests a hearing under this subsection, the dealer's  
19 franchise continues in effect, notwithstanding any term or provision of the franchise  
20 or any other provision of this subtitle, until the Administration, after the hearing,  
21 makes a final determination.

22 (3) A dealer, manufacturer, distributor, or factory branch may appeal the  
23 determination of the Administration to the circuit court for the county in which the  
24 [person's] DEALER'S principal place of business is located.

25 (4) IF THE DEALER, MANUFACTURER, DISTRIBUTOR, OR FACTORY  
26 BRANCH APPEALS THE DETERMINATION OF THE ADMINISTRATION TO A CIRCUIT  
27 COURT, THE DEALER'S FRANCHISE CONTINUES IN EFFECT, NOTWITHSTANDING ANY  
28 TERM OR PROVISION OF THE FRANCHISE OR ANY OTHER PROVISION OF THIS  
29 SUBTITLE, UNTIL THE CIRCUIT COURT MAKES A FINAL DETERMINATION.

30 [(4)] (5) A dealer, manufacturer, distributor, or factory branch may  
31 appeal from a final judgment entered by a circuit court to the Court of Special  
32 Appeals as provided in § 12-301 of the Courts and Judicial Proceedings Article.

33 (f) (1) In addition to any administrative and criminal sanctions imposed  
34 under this subtitle, a manufacturer, distributor, or factory branch that terminates,  
35 cancels, or fails to renew the franchise of a dealer in violation of this section shall pay  
36 to the dealer the fair value of his business as a going concern.

37 (2) On payment, the dealer shall convey his business, free of liens and  
38 encumbrances, to the manufacturer, distributor, or factory branch.

1 15-211.1.

2 (a) (1) A designated family member of a deceased or incapacitated dealer  
3 may succeed the dealer in the ownership or operation of the dealership under the  
4 existing franchise agreement if the designated family member:

5 (i) Gives the manufacturer, distributor, or factory branch written  
6 notice of the designated family member's intention to succeed to the dealership within  
7 120 days after the dealer's death or incapacity;

8 (ii) Agrees to be bound by all of the terms and conditions of the  
9 franchise agreement; and

10 (iii) Meets the current criteria that the manufacturer, distributor, or  
11 factory branch generally applies in qualifying dealers.

12 (2) A manufacturer, distributor, or factory branch may refuse to honor  
13 the existing franchise agreement with the designated family member only for good  
14 cause.

15 (b) (1) The manufacturer, distributor, or factory branch may request from a  
16 designated family member personal and financial data reasonably necessary to  
17 determine whether the existing franchise agreement should be honored.

18 (2) The designated family member shall supply the personal and  
19 financial data promptly upon the request.

20 (c) If a manufacturer, distributor, or factory branch believes that good cause  
21 exists for refusing to honor the succession, the manufacturer, distributor, or factory  
22 branch may, within 60 days after receipt of the notice of the designated family  
23 member's intent to succeed the dealer or, if the manufacturer, distributor, or factory  
24 branch requested personal or financial data, within 60 days after the receipt of the  
25 requested data, provide written notice to the designated family member of the  
26 manufacturer, distributor, or factory branch's refusal to approve the succession.

27 (d) The notice of the manufacturer, distributor, or factory branch provided in  
28 accordance with subsection (c) of this section shall state the specific grounds for the  
29 refusal to approve the succession and that discontinuance of the franchise agreement  
30 shall take effect not less than 90 days after the date the notice is provided.

31 (e) If written notice of refusal is not provided in accordance with subsection (c)  
32 of this section, the franchise agreement shall continue in effect and shall be subject to  
33 termination only as otherwise permitted by this title.

34 (f) This section does not preclude a dealer from designating any person as the  
35 dealer's successor by written instrument filed with the manufacturer, distributor, or  
36 factory branch. If a written instrument is filed, the instrument alone shall determine  
37 the succession rights to the management and operation of the dealership.

38 (G) (1) THIS SECTION APPLIES ONLY TO A DEALER WHO IS AN INDIVIDUAL.



1                   (2)       IN THE EVENT OF THE INCAPACITY OR DEATH OF AN INDIVIDUAL  
2 DESIGNATED TO ACT AS A REPRESENTATIVE OF A DEALER THAT IS AN ENTITY  
3 UNDER § 15-207(G) OF THIS SUBTITLE, THE PROCEDURE FOR REPLACEMENT OF THE  
4 INDIVIDUAL SHALL BE AS PROVIDED IN § 15-207(G) OF THIS SUBTITLE.

5       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2006.